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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re WILLIAM B. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. C.C., Defendant and Appellant.	G042042 (Cons. with G042268) (Super. Ct. Nos. DP005691 & DP005692) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jane Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for the Minor William B.

Sharon S. Rollo, under appointment by the Court of Appeal, for the Minor Noah B.

* * *

William and Noah were first removed from their parents by Orange County Social Services Agency (SSA) in November 2001 when Noah was born with a positive toxicology screen for methamphetamines. Over the next six years, the boys were shuttled back and forth three times between foster care and parental custody. In August 2008, in accordance with an opinion filed by this court (*In re William B.* (2008) 163 Cal.App.4th 1220), the juvenile court denied further reunification services and set a permanent plan selection hearing, which finally began in April 2009. In the interim, the mother filed several petitions under Welfare and Institutions Code section 388,[1] seeking the return of the boys to her custody or additional reunification services and increased visitation. One of these petitions generated an appeal and another opinion from this court (*In re William B.* (Sept. 29, 2009, G041546) [nonpub. opn.]).

In May 2009, the juvenile court concluded the permanent plan selection hearing and terminated parental rights, freeing William and Noah for adoption, presumably by the foster parents who have cared for them for much of their lives. The mother appeals, claiming the juvenile court erred in failing to find that her relationship with the boys outweighs the benefits of adoption. There is ample evidence to support the juvenile court's determination that William and Noah, now twelve and eight, respectively, desperately need the stability and security adoption would provide more

[1] All statutory references are to the Welfare and Institutions Code.

than they need to continue their relationship with the mother. Accordingly, we affirm the judgment.

FACTS

The facts of this case through January 2009 are described in our previously filed opinions *In re William B.*, *supra*, 163 Cal.App.4th 1220 and *In re William B.*, *supra*, (G041546). We incorporate these facts into this opinion by reference and summarize the subsequent events and testimony adduced at the permanent plan selection hearing.

Through his counsel, William filed a petition under section 388 in late January 2009 to suspend visits with the mother. His counsel submitted a declaration stating William told him the visits were "weird" and he would "feel normal, average and all right without visits." William also stated his foster parents could decide whether he should see his mother. The juvenile court granted a hearing on William's petition, but the hearing was repeatedly continued and ultimately withdrawn by counsel.

The mother filed another petition under section 388 in April 2009, seeking to have the boys returned to her custody or to receive further reunification services and increased visitation. The juvenile court found the mother had not made a prima facie showing for relief and denied the petition without a hearing.[2]

At the permanent plan selection hearing, SSA submitted reports detailing events during February, March, and April 2009. Although William was reluctant to attend visits with the mother, he missed only one. He told the social worker he would choose staying in his current placement if he had to decide; he worried that "things would go back to the way it was before" if he lived with his mother. Noah seemed to enjoy the visits, and the mother dealt appropriately with his sometimes difficult behavior. But he

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[2] The mother filed a notice of appeal from the order denying her section 388 petition (G042042), which is consolidated here with her appeal from the order terminating parental rights. But the mother does not raise any error regarding the denial of the section 388 petition in her briefs; accordingly, we do not discuss the order.

told the social worker that the thing he liked most about visits was "'get[ing] stuff from my mother.'" After the visit on April 16, both boys separately reported "their mother tried to pressure them [into] telling the judge that they wanted to live with her. . . . [T]hreatening that if they didn't pick her, that they would never get to see their [maternal] grandparents again."

Trial began on April 21 and continued over nine court days until May 21. Diamond Vu, the social worker assigned to William and Noah's case since December 2007, testified the mother had been receiving monitored visits with the boys twice a month for four hours each time since Vu had been on the case. Despite the mother's frequent requests to increase visits, Vu had not done so. At first, her supervisor, Mary Jane Fryberger, advised her it would not be in the boys' best interests to increase the visits. Later, Vu declined to increase visits because of the boys' reactions to the existing visits. William sometimes expressed reluctance to visit, and both boys "displayed different behaviors" after visits: "Noah would have tantrums, William would shut down, and so I was thinking more of the children and how they're reacting to the visits." Vu also received a report from the boys' therapist, Peter DiManno, in July 2008 in which he stated that visits with the mother were "very disruptive" for William because "[t]here's been such a long history of trauma as a result of being with his mom and dad . . . ."

Vu also testified that another reason she did not increase the mother's visits was because when she was assigned the case, she was told there was "a hold [o]n all changes" by "the appellate attorney. It was the previous [deputy] county counsel who was involved." The juvenile court sustained objections based on attorney-client privilege to subsequent attempts by the mother's counsel to elicit information about the "hold."

Fryberger testified she recommended no increase in visitation because the case was on appeal, the children were in foster care for the third time, and they were exhibiting negative behaviors relating to visits with their mother. "[H]aving read all the different acting out behaviors that they've had throughout the years" and "[t]aking all of

that into consideration, I didn't feel that it would be beneficial to them to exacerbate their behavior problems or their mental health issues."

Dionne Reid preceded Vu as the social worker on the boys' case. She testified she was assigned to the case from October to December 2007. At that time, the mother was receiving eight hours of monitored visitation per month. She visited consistently, and the boys enjoyed the visits. The mother asked Reid for an increase in visits, but Reid "didn't feel that I had the case long enough for me to assess the case appropriately to increase a visit."

At the end of Vu's testimony, the court considered the mother's motion to "Compel Application of Parental Benefit Exception . . . ." The mother claimed the deputy county counsel wrongfully instructed the social worker not to increase visitation as had been ordered by the juvenile court in September 2007 because the case was on appeal. The mother pointed out that the order was not stayed by the juvenile court pending appeal. The mother further claimed the reason for the failure to increase visitation was to "drive a wedge between the children and their mother" and the appropriate remedy was to compel the application of the parental benefit exception, thus preserving her parental rights.

The juvenile court denied the motion "on grounds that no wrong has been shown" and "even assuming a wrong were to be shown, the remedy is not appropriate or proper in accordance with the Court of Appeal decision *In re William B.*, nor is such a remedy shown to be in minors' best interest."

The mother testified she tried hard to make the visits with her boys fun and interesting. She felt the boys would be "devastated" if her parental rights were terminated because they are close to her and the three of them have a strong bond of love.

The juvenile court found the children were likely to be adopted and that the parental benefit exception did not apply. Despite the mother's regular visits, "neither

William nor Noah would benefit from continuing the relationship with [the mother] to such a degree that terminating her parental rights would be detrimental to either of them."

DISCUSSION

The mother contends the juvenile court erred in failing to apply the parental benefit exception. She argues she did everything she could do to maintain a bond with her boys, given SSA's refusal to increase the time she was allowed to visit. She further argues the boys were always glad to see her and would benefit from continued contact with her. But even assuming the truth of these arguments, we conclude the juvenile court correctly refused to apply the parental benefit exception.

At a permanent plan selection hearing, the juvenile court will ordinarily terminate parental rights if it finds by clear and convincing evidence that a child is adoptable. The termination of parental rights to an adoptable child can be avoided, however, if the court finds "a compelling reason for determining that termination would be detrimental to the child" due to at least one of several statutorily-described circumstances. (§ 366.26, subds. (c)(1)(B)(i)-(iv).) The so-called beneficial relationship exception describes circumstances where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) In order to prove that the exception applies, a parent must overcome the strong statutory presumption in favor of adoption and show that the relationship between her and the child is so beneficial that its severance would render the termination of parental rights detrimental to the child. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) "[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

The juvenile court here correctly balanced the potential benefit of adoption to the boys against the potential detriment from losing their relationship with the mother.

The record is replete with evidence of the boys' need for stability and security. At the time of the permanent plan selection hearing, they had been living with their foster family for more than two consecutive years and were thriving. Both expressed they felt safe with their foster parents and could envision a positive future there. The visits with their mother kept them on an emotional roller coaster and prevented them from solidifying their places in a secure family unit.

The mother's efforts to maintain her relationships with the boys, while commendable, are not enough to justify keeping them in limbo. The exceptions to the termination of parental rights come into play only if the parent proves there is a *compelling* reason that termination would be *detrimental* to the child. (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court found no such compelling reason, and its order is supported by substantial evidence in the record. (*In re Casey D*. (1999) 70 Cal.App.4th 38, 53.)

The mother also contends the juvenile court should have granted her motion to compel the application of the benefit exception because she was denied due process of law "by unlawful instructions by a deputy county counsel to the . . . social worker" not to increase visitation while the case was on appeal. She claims the minimal visitation she was given "virtually ensured" she would not be able to satisfy the requirements of the parental benefit exception.

The mother did not establish a denial of due process. She was statutorily entitled to visitation with the boys (§ 366.21), and she received it. (Cf. *In re Hunter S.* (2006) 142 Cal.App.4th 1497.) There is ample evidence in the record to support the decision not to increase visitation based on the needs of the boys.

Furthermore, the mother's motion was not an appropriate remedy for her complaint against the deputy county counsel. The application of an exception to the termination of parental rights is meant to serve the interests of the child, not as a sanction against SSA or the county counsel's office. The proper remedy was a petition under

section 388 to increase visits. The mother sought this remedy first in January 2009 and again in April 2009. She was unsuccessful both times because she was unable to make a prima facie showing that increased visitation would be in the best interests of the boys. The order denying her petition filed in January 2009 was affirmed by this court in *In re William B., supra*, (G041546). The mother did not seek review of the order denying her second petition. (See footnote 2, *ante*.)

DISPOSITION

The judgment terminating parental rights is affirmed.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.